

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES BRETT, BUILDING)	C.A. No. 05-11542 RGS
INSPECTOR OF TOWN OF HAMILTON,)	
Plaintiff,)	
))	
v.))	
))	
IRINA V. TEMKINA,))	
))	
Defendant.))	
))	

PLAINTIFF'S MOTION FOR SANCTIONS AGAINST NON-PARTY WITNESS

Pursuant to Fed. R. Civ. P. 45(e), Plaintiff Building Inspector of the Town of Hamilton hereby seeks an order of sanctions against non-party witness Elliott Tiomkin for his failure to comply with a properly issued subpoena. The plaintiff specifically requests that the Court prohibit the introduction of any testimony, by affidavit or in person, of Mr. Tiomkin and that he be ordered to pay plaintiff's costs incurred because of his non-appearance. Mr. Tiomkin is the son of the defendant Irina Temkina. He was duly subpoenaed to appear for deposition on June 30, 2006. He requested that his deposition be moved to a different day. All attempts to agree on a different day proved unavailing, as Mr. Tiomkin took the position after June 30th that he was not required to attend because the discovery deadline had passed. He has never filed a motion for a protective order.

There are few meaningful sanctions that can be imposed against a non-party witness for his failure to appear. At the least, he should be ordered to pay the costs incurred by the plaintiff for his last minute notification that he refused to appear. But it

would be highly unfair and prejudicial to the plaintiff were Mr. Tiomkin to submit an affidavit or appear at trial to testify on his mother's behalf when the plaintiff has had no opportunity to depose him. Mr. Tiomkin is a recent graduate of law school and has recently sat for the California bar examination. Willful noncompliance with the rules of court and a duly-served subpoena by a future member of the bar cannot be countenanced. Ms. Temkina should not be permitted to benefit from Mr. Tiomkin's noncompliance.

Wherefore, plaintiff Building Inspector of the Town of Hamilton requests that its motion for sanctions be granted. Plaintiff further relies upon the memorandum in support of this motion and the Affidavit of Donna Brewer MacKenna filed herewith.

Dated: October 20, 2006

Respectfully submitted,
CHARLES BRETT, BUILDING INSPECTOR
OF TOWN OF HAMILTON,

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the *pro se* defendant by email and by first class mail, postage pre-paid on October 20, 2006.

/s/ Donna Brewer MacKenna

By: /s/ Donna Brewer MacKenna
Donna B. MacKenna, B.B.O. No. 545254
CASNER & EDWARDS, LLP
303 Congress Street
Boston, MA 02210
(617) 426-5900
mackenna@casneredwards.com

LOCAL RULE 7.1 CERTIFICATION

I certify that I contacted the defendant Irina V. Temkina by email in an attempt to narrow or resolve the issues raised in this motion. That effort was unsuccessful.

/s/ Donna Brewer MacKenna

Donna Brewer MacKenna